MISCELLANY.

INTERNATIONAL LAW NOTES ON THE WAR.

1. The Vindication of Neutrality.—International Law is being tested as it has not been tested for a century, and thus far it has not come out very successfully from the test. It was believed that the more quickened conscience of nations would have made impossible in our age those flagrant violations of neutrality which marked the wars of the 17th and 18th centuries. In those times the belligerent maxim was, "Who is not with us is against us," and it was a common practice for a strong Power at war to call upon a weak State with which it was at peace to give it assistance by way of supplies and free passage, or be considered an enemy. Germany in her dire need today is returning to that lawless method of warfare. It was pointed out years ago by the late Professor Westlake that the distinction drawn by German publicists between *Kriegsraison and Kriegs-manier,* or between what is legitimate according to the International Law of war and what it is claimed may be done in virtue of a supposed natural law of self-preservation, menaced the whole fabric of the law of nations. The violation of the neutrality of Belgium and Luxemburg seems to show that the Germans in this war are proposing to act according to the *Kriegs-manier,* and thereby to disregard the best established rights of neutral States. That was the way in which Napoleon made war, and in the end he paid the penalty by arousing the hostility of the world against him. Neutralized States, though they may be small Powers, are not without remedy against a belligerent aggressor. The State itself whose neutrality is violated may—and, indeed, must—resist with all its force; and any of the guaranteeing Powers are entitled, though they are not bound, to come to its assistance against the aggressor. It would nullify neutralisation and make the condition of the smaller Powers impossible if the guarantors never acted upon their conventional and moral obligation. True, a State is not bound to honour a treaty obligation when the other parties to the treaty stand aloof or acquiesce in the breach. But the violation of a treaty of neutralisation where the State concerned is a friendly and neighbouring country imposes a more serious call; and England, at least, has this moral basis in the war that she is standing forth as the champion of the rights of small Powers and of the law of nations.

2. The Need for a Declaration of War.—The need for some formal notice of the opening of hostilities as between belligerents has only been legally established since the Hague Conference of 1907. It was provided in one of the conventions made at that Conference that one Power, before commencing hostilities against another, must either hand in to the representative of the State a formal declara-

tion of war, or must have sent an ultimatum, *i. e.*, a demand, the refusal of which within a fixed time will be followed by war. The purpose of such a requirement is partly to avoid an act of perfidy, and partly to give definite notice to the subjects of the belligerent and neutral countries of the outbreak of hostilities, which imposes on them different obligations. From the moment that a state of war exists in virtue of the declaration or the expiration of an ultimatum, trading between enemy subjects is forbidden, and the rights of capture of enemy property at sea come into operation. Though in relation to neutral powers the further condition of communicating the declaration to the State is required, it is from the same time that the rights and liabilities as to contraband, unneutral service, and blockade become effective. In the wars of the eighteenth and nineteenth centuries, indeed, a formal declaration was comparatively rare. The United States began war with England in 1812 by seizing all British vessels in their harbours, and in 1854, before the Ambassadors had been withdrawn on either side, the British fleet entered the Black Sea with the design of compelling the Russian squadron to return to Sebastopol. An undoubted act of hostility such as an invasion of territory has the same effect as a declaration, and in the present case it is not clear whether such acts did not precede the German declaration against France. England, however, exactly observed the Hague requirement by handing the German Government an ultimatum; as soon as her conditions were rejected, there was a state of war between the two nations. Thereupon any German ship found by an English cruiser on the high seas or in English territorial waters might be captured and sequestered, and all trading between English and German subjects became illegal.

3. The Right of Seizure of Private Property.—Besides the right of capture of the enemy's private property at sea, which comes into being with the outbreak of war, a belligerent State exercises from that moment very sweeping rights over the private property of its own subjects and of neutrals which is found within its borders. It may appropriate anything which is useful for the purpose of war, and that without any legal obligation to pay compensation, though as regards neutral owners the payment of compensation may be compelled by the neutral Government. The right is sometimes known as *Angary,* which was the name given in Roman Law to the privilege of a Roman governor to provide himself and his suite with means of locomotion from the provincials. It is in virtue of this right that the British Government has seized the four big men-of-war in English dockyards which were being built or fitted out for the neutral states of Turkey and Chili. And in virtue of the same right the Germans are reported to have seized at the end of last week, before the declaration of war with England, the small English ships which were in German territorial waters. This seizure

was not illegal; and, apart from the right of *Angary*, which is supported by one of the Hague rules, it might be justified, perhaps, under the old practice of hostile embargo, by which the property of a country which is suspected of menacing war may be detained by the other country till its intention is manifested. If hostilities supervene, the seizure originally made by way of precaution is converted into capture; if there is no outbreak, the property may be returned, and the seizure ranks only as civil detention. This practice has been discontinued in recent wars, but is not obsolete. The right of a belligerent State over the private property of its own subjects is less open to question, and is strikingly illustrated by the taking of all railways for military purposes, and the royal proclamation in England requisitioning for the State all modes of conveyance. It is the paramount need of the collective nation which naturally overrides the claims of the individual at a national crisis. The same principle authorises the State at a time when war is threatening to prohibit under severe penalties the exportation by persons within the jurisdiction of articles useful in war. Thus the proclamation issued at the beginning of the week, before England was at war, forbade the export from this country of a long list of things which fell within the class of absolute contraband. Such trade is penalised for different reasons, both by the State which has reason to think that it may need all possible supplies of war, and by a belligerent which intercepts it on the way to the enemy country.

4. Transfer of Vessels to a Neutral Flag.—There is a current idea that on the outbreak of war the merchant vessels of a belligerent Power may safely be transferred to a neutral flag, and will then be immune from capture. The Congress of the United States, it is said, is passing a bill to facilitate such transfers from the English or other foreign flags to the American. It should, however, be noted that, according to the Declaration of London, which represents the more liberal opinion on the subject, the transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel is exposed. And in certain cases there is an absolute presumption of voidness. In these circumstances, English or German vessels seeking the security of the American flag will hardly be safe from capture and confiscation by a cruiser of the other country, and neutral commerce upon such vessels will be no more protected than if there had been no change of flag. Even if the transfer took place before the hostilities broke out, it may be questioned by a belligerent, supposing that there is reason to think that it was prompted by the likelihood of war. English merchantmen will, therefore, do better to trust to English convoy across the ocean than to an attempted change of character which the enemy will not regard.—London Law Journal.

The Moratorium.—A moratory law, as the authorities express it, is "a law passed in times of emergency postponing for a specified time the due date of bills of exchange and other obligations." The delay, or period of grace allowed by the law, is a "moratorium," and there are two degrees of moratoria--a minor and a major—the minor applying only to bills of exchange, and the major including these and all other contracts which enforce upon a debtor the liability to make money payments to a creditor at a fixed time. It is only a partial moratorium of the former kind which was established by the Bill passed through the House of Commons on Monday; for it applies only to bills of exchange and limits the term of postponement to one month. The effect of it is to relieve persons who cannot meet their bills from having them enforced during the period of grace on the terms that their ultimate liability shall be increased by the addition of the month's interest at the current rate. Once a moratorium is proclaimed it is usually continued by successive prolongations till the emergency has passed which gave occasion for it, and it may be assumed that, as in the case of France in 1870, the moratorium will be continued until the end of the war. More than that, it is to be expected that the minor moratorium will develop into the major, and that among the temporary expedients adopted by the Government to relieve the economic strain which is now placed on the country will be the postponement of the period of payment of loans and mortgages so as exclude proceedings to enforce such obligations during the war. There has been no moratorium in this country for over a hundred years, but one has to go back to Napoleonic times to find a parallel for the present emergency, and the magnitude of the crisis justifies the imposition of the full moratorium, which will give temporary relief against all monetary contracts.—London Law Journal.